

Disciplinary and Other NASD Actions

REPORTED FOR SEPTEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of August 2004.

Firms Suspended, Individuals Sanctioned

Westpark Capital Corporation (CRD #39914, Los Angeles, California) and Richard Alyn Rappaport (CRD #1885122, Registered Principal, Los Angeles, California) submitted an Offer of Settlement in which the firm was censured and fined \$50,000 jointly and severally with Rappaport, suspended from issuing research reports for six months, and required to retain an independent consultant, not unacceptable to NASD, to review and make recommendations concerning the adequacy of its current supervisory and operating procedures. Rappaport also was suspended from association with any NASD member in a Series 24 capacity for 30 days and shall requalify by examination as a Series 24. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm issued research reports that omitted material facts and qualifications about the stocks. NASD found that Rappaport knew or had reason to know that the statements and claims were unwarranted, exaggerated, false or misleading. The findings also stated that the firm and Rappaport did not have a reasonable basis for recommending the stocks as a "strong buy" or "buy" did not have a principal initial the research reports as evidence of supervisory review before the firm released the reports. NASD also found that the firm had not adopted and implemented written supervisory procedures reasonably designed to ensure compliance with the provisions of Rule 2711.

The firm's suspension began August 16, 2004, and will conclude at the close of business February 15, 2005. Rappaport's suspension began August 16, 2004, and concluded at the close of business September 14, 2004. (NASD Case #CAF030062)

Firms Fined, Individuals Sanctioned

AFS Equities, Inc. (CRD #35464, Birmingham, Alabama) and Trava Lance Williams (CRD #2437216, Registered Principal, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$11,000 jointly and severally. Williams was also suspended from association with any NASD member in any capacity for 10 business days. Within sixty days of the acceptance of this AWC, the firm will provide NASD with a copy of its updated written supervisory procedures as they relate to the monitoring of the firm's net capital position. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the

entry of findings that the firm, acting through Williams, engaged in a securities business when the firm's net capital was below the required minimum and failed and neglected to provide notification that the firm's net capital was below the required minimum. The findings also stated that the firm, acting through Williams, failed and neglected to file an accurate FOCUS Report Part IIA and failed to file timely its annual audited financial statement report. NASD also found that the firm failed and neglected to establish, maintain, and enforce written supervisory procedures reasonably designed to monitor the firm's net capital position.

Williams' suspension began September 7, 2004, and will conclude at the close of business September 20, 2004. (NASD Case #C05040055)

Daewoo Securities (America) Inc. (CRD #30679, New York, New York) and Hong Gon Kim (CRD #3080768, Registered Representative, Tenafly, New Jersey) were fined \$7,500, jointly and severally, the firm and Kim each were fined \$2,500, and Kim was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm and Kim consented to the described sanctions and to the entry of findings that Kim failed to register as a principal but functioned as a principal of the firm. The findings also stated that the firm and Kim operated securities business without at least two registered principals, and that the firm and Kim allowed unregistered persons to engage in the securities business.

Kim's suspension began July 6, 2004, and concluded at the close of business July 19, 2004. (NASD Case #C10030076)

First Capital Securities, Inc. (CRD #105093, Dallas, Texas) and Jorge Felipe Hernandez (CRD #4298909, Registered Principal, Mexico City, Mexico) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, \$7,500 of which was jointly and severally with Hernandez. Hernandez was suspended from association with any NASD member in any principal or supervisory capacity for 60 days and required to obtain, by examination, a general securities principal license (Series 24) within 90 days. If Hernandez fails to obtain a securities principal license within 90 days, he will be suspended from association with any NASD member in any capacity until such time as he obtains the required license.

Without admitting or denying the allegations, the firm and Hernandez consented to the described sanctions and to the entry of findings that they conducted a securities business while failing to maintain the required minimum capital. The findings also stated that the net capital deficits resulted from loans in the amount of \$244,000 from the firm to its owner, Hernandez. The findings further stated that the firm erroneously treated the loans payable as an allowable asset on its books and records

because the loans were secured by collateral—shares of stock in a privately held company owned by Hernandez. However, because there was no determinable market value for the stock, the loans were deemed unsecured and, therefore, the loans payable should have been treated as a non-allowable asset. NASD found that the firm's net capital computations and its FOCUS reports were all materially inaccurate. In addition, NASD found that despite Hernandez's written representation to NASD that he would not engage in the management of the firm's securities business, the firm, acting through another individual, permitted Hernandez to actively engage in the management of the firm's securities business without being registered in any capacity. Furthermore, NASD found that the firm, acting through another individual, failed to amend its Form BD to disclose Hernandez's role at the firm.

Hernandez's suspension began September 7, 2004, and will conclude at the close of business November 5, 2004. (NASD Case #C06040022)

International Correspondent Trading, Inc. (CRD #37401, Jersey City, New Jersey) and Ilana Ben-Mayor (CRD #1707317, Registered Principal, Douglaston, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, jointly and severally with Ben-Mayor. Ben-Mayor was also suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm and Ben-Mayor consented to the described sanctions and to the entry of findings that the firm, acting through Ben-Mayor, failed to make and keep current accurate records of discretionary trades in options effected in an institutional customer's account. The findings also stated that the firm's order tickets and trade blotters inaccurately classified the subject discretionary trades as "solicited" orders.

Ben-Mayor's suspension began August 23, 2004, and concluded at the close of business September 3, 2004. (NASD Case #C9B040071)

Salomon Grey Financial Corporation (CRD 43413, Dallas, Texas) and Kyle Browning Rowe (CRD #2310978, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which the firm was censured and fined \$100,000 jointly and severally with Rowe. Rowe was also suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the firm and Rowe consented to the described sanctions and to the entry of findings that the firm, acting through Rowe and others, purchased 1 million shares of a common stock at varying prices substantially discounted from the current market price. NASD found that the firm, after each block purchase, sold the stock to its retail customers through payment of substantial concessions to its brokers that constituted over 33 percent of the public float of the stock. The findings also stated that the firm's purchase

and sales of the stock constituted a distribution under the terms of Securities and Exchange Commission (SEC) Regulation M and that while conducting the distribution, the firm acted as a market maker and bid for, purchased, and induced others to bid for or purchase shares of the stock. In addition, the firm failed to make any filings with the Corporate Finance Department of NASD regarding the distribution and received unfair and excessive compensation of \$686,000 from the offerings, and arrangements before commencing the distribution.

Rowe's suspension began September 7, 2004, and will conclude at the close of business September 20, 2004. (NASD Case #CAF030043)

Tejas Securities Group (CRD #36705, Austin, Texas) and Arnold Reed Durant (CRD #716150, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000, jointly and severally with Durant and \$5,000 jointly and severally with another respondent, and required to retain an independent outside consultant to conduct a review of, and prepare a written report and make recommendations as to the adequacy of its supervisory compliance policies and procedures and its system for applying such policies and procedures. Durant also was suspended from association with any NASD member in a principal or supervisory capacity for 30 days.

Without admitting or denying the allegations, the firm and Durant consented to the described sanctions and to the entry of findings that the firm traded ahead of its research report. NASD found that the firm, acting through Durant, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with NASD rules regarding trading ahead of research. The findings also stated that the firm failed to report timely and accurately through the Automated Confirmation Transactions ServiceSM (ACTSM) certain NASDAQ National Market Securities[®] (NNM[®]), Over-the-Counter (OTC) securities, and Consolidated Quotation Service (CQS) equity securities transactions and failed to report, and to timely and accurately report through the Trade Reporting and Compliance Engine (TRACE) certain debt securities transactions. NASD also found that the firm, acting through Durant in connection with the equity securities transactions and debt securities transactions, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with TRACE Rules. In addition, NASD determined that the firm failed to enforce its procedures regarding complying with other trade reporting provisions, in that its procedures require that all trades be reported timely and accurately.

Durant's suspension began August 16, 2004, and concluded at the close of business September 14, 2004. (NASD Case #C06040021)

Firms Fined

Alpine Securities Corp. (CRD #14952, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it inaccurately reported customer sales as short transactions to ACT. The findings also stated that the firm failed to establish a system or written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rule 6130(d)(6), in that the firm's procedures did not specify what individual was responsible for supervising compliance with Rule 6130(d)(6); what steps and review were to be taken by the supervisor; and the frequency of reviews or how such reviews were to be documented. (NASD Case #C3A040036)

Banc of America Securities LLC (CRD #26091, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$7,500, and required to pay \$7,163.10, plus interest in restitution to a public customer. In addition, the firm will update its written supervisory procedures as they relate to the determination of the fair market value of municipal securities being bought or sold from a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, based on the bids provided by the broker's broker, the firm purchased a municipal security from a public customer for its own account and then sold the security to the broker's broker at a nominal gain. NASD found that the price paid to the customer, and received by the firm, was below the fair market value of the security in an amount equal to 11.34 percent. The findings also stated that, by relying solely on the bids provided by the broker's broker to determine the fair market value of the security, the firm failed to ensure that the transaction was executed at an aggregate price that was fair and reasonable. (NASD Case #C05040057)

Blaylock & Partners, L.P. (CRD #35669, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to act in a capacity that required registration while the individual's registration status with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm allowed its compliance director to perform the duties of a chief compliance officer while he was not registered as a general securities principal. (NASD Case #C10040080)

Brokerage America, LLC (CRD #47966, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$2,112.35, plus interest, in restitution to public customers.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. (NASD Case #CMS040102)

The GMS Group, LLC (CRD #8000, Livingston, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it maintained the registration of a general securities representative with the firm even though the individual was not active in the firm's investment banking or securities business and was not functioning as a representative. The findings also stated that the firm permitted representatives associated with the firm to effect, or failed to prevent each from effecting, transactions in U.S. Government securities when they were not registered in a capacity that qualified them to effect such transactions. NASD also found that the firm failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with NASD rules relating to the registration of associated persons. (NASD Case #C9B040065)

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker, the firm caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet® to the market maker whose quotes it locked or crossed a Trade-or-Move Message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. (NASD Case #CMS040111)

Highbridge Capital Corporation (CRD #30208, Cayman Island, B.W.I.) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning the Order Audit Trail SystemSM (OATSSM) within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS in 196 business days. NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning OATS. (NASD Case #CMS040100)

Lehman Brothers, Inc. (CRD #10022, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning crossing incoming orders against non-displayed limit orders, and trade reporting for trades reported by other entities on the firm's behalf and for riskless principal trades. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report through ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal, or an agency capacity. The findings also stated that the firm failed to show the correct time of execution in the memoranda of brokerage orders and the firm's records did not contain an order ticket for a transaction. In addition, NASD found that the firm, as a market maker, failed to execute orders upon presentment at the firm's published bid or published offer in an amount up to its published quotation size, thereby failing to honor its published quotation. Furthermore, the findings stated that the firm's supervisory procedures did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning crossing incoming orders against non-displayed limit orders and trade reporting for trades reported by other entities on the firm's behalf and for riskless principal trades. (NASD Case #CMS040098)

Park Financial Group, Inc. (CRD #30582, Winter Park, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$33,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM, NASDAQ SmallCapSM (SC), and eligible securities, and failed to designate through ACT such last sale reports as late. The findings also stated that the firm failed to report timely to OATS Reportable Order Events (ROEs). In addition, NASD found that the firm discovered an OATS reporting problem after four business days, but was unable to submit required information to OATS for 20 business days. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning trade reporting and OATS. (NASD Case #CMS040097)

Prudential Equity Group, LLC (CRD #7471, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the

described sanctions and to the entry of findings that it sold shares in an initial public offering (IPO) at a premium in the immediate secondary market, and failed prior to the execution of the transactions to obtain the required documentation as set forth in IM-2110-1(f)(1) concerning persons having any beneficial interest in such accounts. The findings also stated that the firm acted as an underwriter in primary offerings of municipal securities and was required to file, or cause to be filed, documents with the Municipal Securities Rulemaking Board (MSRB), but failed to submit timely official statements and/or other documents to the MSRB. **(NASD Case #C10040083)**

Shay Financial Services, Inc. (CRD #43981, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in "adjusted trading," in that it repurchased an interest in a certificate of deposit (CD) from a public customer at a price away from the market (at par value as opposed to current market value) and sold the same customer an interest in another CD at a price away from the market (the interest rate offered to the customer was less than that being offered to other public customers that purchased the same CDs at or about the same time). The findings also stated that the firm paid a concession to unregistered co-brokers for their sales of CDs on behalf of the firm. In addition, the findings stated that the firm failed to maintain customer suitability information on its books and records for its institutional clients that purchased CDs. **(NASD Case #C05040053)**

SII Investments, Inc. (CRD #2225, Appleton, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed and neglected to establish, maintain, and enforce adequate written procedures to supervise the sale of variable annuities and variable life insurance products. The findings also stated that the firm's supervision of the sale of variable products was deficient in that, although the firm maintained guidelines for the review of transactions, the guidelines were inadequately documented and the firm failed to maintain adequate records documenting review of specific transactions in accordance with the guidelines. **(NASD Case #C05040059)**

SunAmerica Securities, Inc. (CRD #20068, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed and neglected to establish, maintain, and enforce adequate written supervisory procedures governing the review of transactions in which branch managers dealt directly with customers. The

findings also stated that, although the firm's procedures called for an independent principal review of transactions effected by branch managers, the procedures were not adequately documented or properly communicated to branch managers. **(NASD Case #C05040051)**

UBS Financial Services, Inc. (CRD #8174, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$85,000, and required to file with NASD's Advertising Regulation Department within 30 days of the effective date of this AWC, all presentations, quarterly client letters, fact sheets, and quarterly performance updates relating to privately placed registered investment companies that the firm currently is using on the date of acceptance by the National Adjudicatory Council (NAC) of this AWC. The firm also agreed that, upon receipt of comments from NASD on any of the filed materials, unless notified other wise by NASD, it shall take all reasonable steps to withhold or cause to be withheld such material until further publication until the changes specified by NASD have been made, and such material will be revised and re-filed prior to any use, unless otherwise agreed to by NASD at its sole discretion.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it distributed sales literature regarding privately placed registered investment companies to its public customers that did not comply with NASD rules in that the pieces did not have adequate risk disclosure. The findings also stated that, although the pieces of sales literature were accompanied by offering documents and other sales literature that did include risk disclosure, such disclosure did not cure the violations since each piece of sales literature must independently comply with the standards of NASD Rule 2210(d)(1)(A). NASD also found that the sales presentation stated that the fund was seeking a targeted rate of return without providing a substantiated basis for the target to enable investors to evaluate it. **(NASD Case #CAF040051)**

Vanguard Marketing Corporation (CRD #7452, Valley Forge, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, ordered to pay \$9,443, plus interest, in restitution to public customers, and required to provide NASD, within 90 days of acceptance of the AWC, with a copy of its updated written supervisory procedures as they relate to the determination of the fair market value of municipal securities being bought or sold from a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, after public customers requested that the firm liquidate two different municipal security positions, the firm contacted a broker's broker and obtained bids for the customer's securities, the firm purchased the securities from the customers based on the broker's bid for its own account, and

the firm then sold the securities to the broker's broker at a nominal gain, thereby failing to ensure that the transactions were executed at aggregate prices that were fair and reasonable. (NASD Case #C05040058)

Westminster Securities Corporation (CRD #6105, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$35,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM, NASDAQ SC and OTC equity securities. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM and OTC Equity securities and failed to designate through ACT such last sale reports as late. The findings further stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution, which constitutes four percent of all transactions, that the firm has an obligation to accept or decline in ACT as the order entry ID (OEID) during the review period. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning trade reporting. (NASD Case #CMS040092)

Individuals Barred or Suspended

Karim El Din Amiry (CRD #2756135, Registered Principal, Johnston, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and barred from association with any NASD member in a principal or supervisory capacity. Without admitting or denying the allegations, Amiry consented to the described sanctions and to the entry of findings that he failed to adequately and properly supervise the annuity sales desk personnel of his member firm to assure compliance with New York State Insurance Regulation 60 and applicable NASD rules. (NASD Case #C9B040079)

Emmanuel Mapalo Ancheta (CRD #2577230, Registered Principal, Elk Grove, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Ancheta reassociates with an NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ancheta consented to the described sanctions and to the entry of findings that he failed to timely update material information on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

Ancheta's suspension began August 16, 2004, and will conclude at the close of business August 15, 2005. (NASD Case #C01040020)

John Thomas Archer (CRD #6890, Registered Representative, Escondido, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Archer fraudulently offered and sold unregistered securities in the form of promissory notes by failing to disclose material adverse information concerning the issuer, and failed to obtain prior written approval from his member firm before selling the promissory notes. The findings also stated that Archer acted as a broker by effecting transactions in the accounts of others without the benefit of registration required by Section 15 of the Securities Exchange Act. (NASD Case #C02020057)

Robert Mark Benning (CRD #2002792, Registered Representative, Streator, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Benning consented to the described sanctions and to the entry of findings that while registered with a member firm, he engaged in private securities transactions by selling telephone leases to public customer without notifying his member firm of these transactions, and without receiving prior written approval for these transactions from his member firm.

Benning's suspension began September 7, 2004, and will conclude at the close of business October 21, 2004. (NASD Case #C8A040067)

Herbert Jerome Berghoff (CRD #4320854, Registered Representative, Granada Hills, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Berghoff reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Berghoff consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Berghoff's suspension began September 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C02040022)

Kathleen Biggs-Drake (CRD #4300338, Registered Representative, Port Charlotte, Florida) was barred from association with any member in any capacity. The sanction was based on findings that Biggs-Drake misused customer funds. The findings stated that Biggs-Drake deposited a personal check drawn on a public customer's checking account into her personal account without the customer's knowledge, consent, or

authorization. The findings also stated that Biggs-Drake failed to respond to an NASD request to appear and give testimony. (NASD Case #C07040028)

Adrian Allie Bond (CRD #4003860, Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bond consented to the described sanction and to the entry of findings that he made improper use of the funds of a public customer by completing a form directing that \$10,000 be transferred from the customer's account with Bond's member firm to a credit union account belonging to a third party who subsequently transferred the funds to Bond. The findings also stated that Bond effected the transactions without the customer's knowledge or consent. (NASD Case #C05040060)

Cara Ann Botticelli (CRD #2897269, Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Botticelli consented to the described sanction and to the entry of findings that she participated in an arrangement to misappropriate customer information outside of her member firm for a profit. The findings also stated that Botticelli failed to respond to an NASD request to appear for an on-the- record interview. (NASD Case #C9B040067)

John Alan Briscoe (CRD #3168614, Registered Representative, Columbia, Georgia) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Briscoe consented to the described sanction and to the entry of findings that he falsified firm records and misappropriated his firm's funds in that he submitted false contribution requests for retirement plan participants to his firm, resulting in the payment by the firm of approximately \$71,000 in commissions to which Briscoe was not entitled. The findings also stated that Briscoe failed to respond to NASD requests for information. (NASD Case #C07040037)

Diane Kathryn Byrd (CRD #4078944, Registered Representative, Rapid City, South Dakota) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Byrd consented to the described sanction and to the entry of findings that she misused customer funds totaling \$74,333.20. (NASD Case #C04040038)

Samuel Dale Christmas, Jr. (CRD #4285858, Registered Representative, Detroit, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000

and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Christmas consented to the described sanctions and to the entry of findings that he misused customer funds.

Christmas' suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. (NASD Case # C8A040058)

Paul David Coffman, Jr. (CRD #3046168, Registered Representative, Mattoon, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Coffman consented to the described sanction and to the entry of findings that he misused the funds of public customers in that he accepted checks totaling \$5,119 from the customers for insurance policies, deposited the funds into his bank account without obtaining the policies as directed, and failed to use the funds for the benefit of the customers without their knowledge or consent. The findings also stated that Coffman provided falsified documents to the customers that purported to be an insurance policy for one of the customers and a certificate of liability insurance for the other customer for which he made no payments and for which no policies were issued. (NASD Case #C8A040052)

Jason Wayne Collard (CRD #4069428, Registered Representative, Marion, Arkansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500, ordered to disgorge \$16,675 in partial restitution to public customers, and suspended from association with any NASD member in any capacity for two years. The fine and disgorgement must be paid before Collard reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Collard consented to the described sanctions and to the entry of findings that he participated in private securities transactions and engaged in outside business activities without providing prior written notice to his member firm.

Collard's suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. (NASD Case #C05040050)

Greta Ann Commerford (CRD #1510956, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Commerford consented to the described sanction and to the entry of findings that she misused customer funds totaling \$63,263.78. The findings also stated that Commerford failed to respond to NASD requests for information. (NASD Case #C04040037)

Jennifer Lea Connolly (CRD #4205892, Registered Representative, Keedysville, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Connolly consented to the described sanction and to the entry of findings that, acting in concert with another representative who was registered with an NASD member firm, she caused shares of a mutual fund held in a customer's Individual Retirement Account (IRA) at the firm to be redeemed and a check for \$40,000 to be issued to the customer without the customer's prior knowledge or authorization. The findings also stated that Connolly failed to respond to NASD request for information. **(NASD Case #C9A040029)**

Domitilo Correa (CRD #3121152, Associated Person, West New York, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Correa consented to the described sanction and to the entry of findings that he participated in an arrangement to misappropriate public customer information by attempting to sell customer contact worksheets containing addresses, telephone numbers, and social security numbers outside of his member firm for a profit. The findings also stated that Correa failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C9B040063)**

Jeffrey Lawrence Cox (CRD #861963, Registered Representative, Lemoyne, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cox consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information concerning his dealings with public customers and the disposition of their funds of \$100,000 given to him for investment. **(NASD Case #C9A040026)**

Garry Alexander Damico (CRD #3210136, Registered Representative, Far Rockaway, New York) was barred from association with any member in any capacity. The sanction was based on findings that Damico failed to provide testimony at an on-the-record interview requested by NASD. **(NASD Case #CMS040027)**

Duane Allen Darling (CRD #1014290, Registered Representative, Lowville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Darling consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer, a resident of Colorado, although Darling was not registered to sell securities

in Colorado. The findings also stated that in order to circumvent Colorado State registration requirements, Darling falsified the customer's account documentation to make it appear that the customer was a resident of New York. In addition, the findings stated that Darling exercised discretion in the account of a public customer by effecting transactions in the customer's account without obtaining prior written authorization from the customer or written acceptance of the account as discretionary by his member firm that, in fact, prohibited discretionary accounts. **(NASD Case #C9B040070)**

Siamak Derakhshani (CRD #4038327, Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by examination prior to association with any NASD member. The fine must be paid prior to Derakhshani's reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, Derakhshani consented to the described sanctions and to the entry of findings that, in connection with offers and sales of limited partnership interests in a company, he provided or caused to be provided to public customers the Private Placement Memorandum (PPM). The findings stated that the PPM provided that net profit or net loss would be allocated among the limited partners' capital accounts in proportion to the relative values of such capital accounts. NASD found that the PPM also provided that a limited partner could not make a withdrawal or partial withdrawal from his capital account that would result in an account balance below \$250,000. In addition, NASD determined that contrary to the terms of the PPM, Derakhshani authorized and caused \$450,000 to be paid to a limited partner, and was paid without regard to the net profit or loss or the relative value of the account. The findings also included that this payment resulted in the account being reduced to a \$0 balance, was in contravention of the representations set forth in the PPM, and caused the remaining limited partners to suffer losses in the value of their limited partnership interests that were unrelated to market returns.

Derakhshani's suspension began September 7, 2004, and will conclude March 6, 2005. **(NASD Case #C02040021)**

Gary Patrick Duffy (CRD# 1779786, Registered Principal, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Duffy consented to the described sanctions and to the entry of findings that he distributed sales literature to public customers concerning covered call writing strategies that he downloaded from a third

party's Web site. NASD found that the sales literature failed to present a balanced picture of the risks and merits of investing in options as required by NASD's advertising standards.

Duffy's suspension began August 16, 2004, and concluded at the close of business August 25, 2004. (NASD Case #C3A040034)

Kristian Murphy Fuhse (CRD #2475319, Registered Representative, Yorktown Heights, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Fuhse reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fuhse consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Fuhse's suspension began September 7, 2004 and will conclude at the close of business December 6, 2004. (NASD Case #C9B040066)

Mitchell Todd Galloway (CRD #2990335, Registered Representative, Cedar Hill, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Galloway failed to respond to NASD requests for information. The findings also stated that Galloway engaged in outside business activities without providing his member firm with prior notice of such activities. The findings further stated that Galloway made an unsuitable recommendation to a public customer. (NASD Case #C06040003)

Larry Hiroyuki Goto (CRD #1398303, Registered Representative, Honolulu, Hawaii) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goto consented to the described sanction and to the entry of findings that he participated in private securities transactions, for compensation, outside the scope of his employment with his member firm and failed to provide prior written notice to, or receive approval from, his member firm. (NASD Case #C01040011)

Jeffrey Lou Greenberg (CRD #853296, Registered Representative, East Hanover, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that while associated with a member firm, he settled a customer complaint by paying the customer \$12,500 without the firm's knowledge or approval.

Greenberg's suspension began September 7, 2004, and will conclude at close business October 4, 2004. (NASD Case #C9B040073)

Benjamin Josef Harelick (CRD #3063646, Registered Representative, Westwood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Harelick consented to the described sanctions and to the entry of findings that he signed a public customer's signature to various annuity and insurance product transfer forms.

Harelick's suspension began September 7, 2004, and will conclude at the close of business October 6, 2004. (NASD Case #C11040029)

Eric John Held (CRD #4700846, Associated Person, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Held reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Held consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Held's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C10040084)

Stephen Handley Holley (CRD #1348114, Registered Principal, Brandon, Mississippi) and **Steven Thomas Nosacka (CRD #2938331, Registered Representative, Reserve, Louisiana)** submitted an Offer of Settlement in which they were each fined \$10,000 and suspended from association from any NASD member in any capacity for 31 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to disclose \$21,250 in political contributions to their member firm as required by their firm's written supervisory procedures.

Holley's suspension began September 7, 2004, and will conclude at the close of business October 7, 2004. Nosacka's suspension began September 7, 2004, and will conclude at the close of business October 7, 2004. (NASD Case #C05030055)

William Zane Jackson, Jr. (CRD #3174581, Registered Representative, Blythewood, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Jackson reassociates with any NASD member following the suspension or before requesting relief from any statutory

disqualification. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he effected transactions in the account of public customers without their authorization or consent. NASD found also that Jackson forged the signatures of public customers on applications.

Jackson's suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. (NASD Case #C07040062)

Kevin D. Jones (CRD #4625366, Associated Person, Tulsa, Oklahoma) was barred from association with any NASD member in any capacity. The sanction is based on findings that Jones willfully failed to disclose material information on his Form U4. The findings also stated that Jones failed to respond to NASD requests for information. (NASD Case #C05040013)

Kojo Nantambu Kandi (CRD #3055831, Registered Representative, Columbus, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kandi recommended unsuitable transactions for a public customer's account without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer, based upon customer's age, net worth, financial situation, and investment objectives. The findings also stated that Kandi exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. (NASD Case #C8B040001)

Janice D. Kelton (CRD #4110467, Registered Representative, Gadsden, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Kelton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kelton consented to the described sanctions and to the entry of findings that she signed the name of public customers to securities account application forms without the knowledge or consent of the customers.

Kelton's suspension began August 16, 2004, and will conclude at the close of business November 15, 2004. (NASD Case #C05040052)

Rodney H. Lankford (CRD #1652793, Registered Principal, Gadsden, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Lankford reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lankford consented to the

described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. NASD also found that Lankford used the means or instrumentalities of interstate commerce to solicit the purchase of a security, when no registration statement was in effect for the security.

Lankford's suspension began September 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C05040061)

Michael Thomas Lemons (CRD #1350907, Registered Representative, Newton, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lemons consented to the described sanction and to the entry of findings that he received a check payable to his member firm in the amount of \$4,500 from a family member who intended the funds to be deposited into variable life insurance accounts. The findings stated that Lemons deposited the check into a bank account under his control and did not transmit the funds to the firm; rather, the funds were used for his own use and benefit. NASD also found that Lemons failed to respond to NASD requests to appear and testify. (NASD Case #C07040065)

Matthew Alan Lesnikowski (CRD #1530281, Registered Supervisor, Eden Prairie, Minnesota) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any principal or supervisory capacity for 30 business days. Without admitting or denying the allegations, Lesnikowski consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to detect and prevent unsuitable mutual fund transactions in the account of a public customer and achieve compliance with applicable securities laws, regulations, and NASD rules. The findings also stated that Lesnikowski failed to consider the class of mutual funds purchased when performing the suitability review of the registered representative's mutual fund transactions. Lesnikowski approved Class B purchases executed by the registered representative even though the purchases were made in violation of firm policy requiring pre-approval by a branch manager of mutual fund transactions over \$100,000, and were made in contravention of a prohibition contained in the fund prospectus against purchases of Class B shares over \$250,000. In addition, NASD found that the public customer would have been eligible for breakpoints, paid lower on-going expenses, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased in his account.

Lesnikowski's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C9B030081)

Glenn Allen Levit (CRD #2323235, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Levit consented to the described sanctions and to the entry of findings that he settled a customer complaint by paying \$96,000 to the customer, without informing and obtaining authorization from his member firms.

Levit's suspension began August 16, 2004, and concluded at the close of business August 27, 2004. (NASD Case #C10040078)

Trevor Kene Litherland (CRD #732572, Registered Representative, Naperville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 days. The fine must be paid before Litherland reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegation, Litherland consented to the described sanctions and to the entry of findings that he conducted outside business activities without providing prompt written notice to his member firm.

Litherland's suspension began August 16, 2004, and concluded at the close of business August 30, 2004. (NASD Case #C8A040063)

Jack Allen Marble (CRD #2246040, Registered Principal, Keedysville, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marble consented to the described sanction and to the entry of findings that he conspired with another representative to cause shares of a mutual fund held in a customer's IRA at his member firm to be redeemed and a check for \$40,000 issued to the customer without the customer's prior knowledge or authorization. The findings stated that, after the check was deposited to a bank account the customer owned, Marble induced the customer to write a check against the bank account payable to him for \$40,000 under false pretenses regarding the purpose of the check and/or what would be done with the funds and converted the funds to his own use and benefit. NASD also found that Marble failed to respond to NASD requests for information. (NASD Case #C9A040030)

Ronald James Marszalek (CRD #2891521, Registered Representative, Joliet, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Marszalek affixed the signature of his branch manager on documents intended to effect changes in customer account records without the branch manager's knowledge or

consent. The findings also stated that Marszalek effected purchases of securities in the joint account of public customers and effected the transfer of securities from their account to the account of another customer without their knowledge or consent and without Marszalek having authority to exercise discretion in the account. NASD also found that Marszalek effected the sale of the securities that he had transferred from the account of public customers to the account of another public customer for \$14,712.27, received a \$12,212.27 check from the customer who retained the \$2,500 balance of the proceeds of the sale, and endorsed the check and used the funds for his own benefit or for some purpose other than the benefit of the public customers. (NASD Case #C8A040004)

Randy Lawrence McClure (CRD #1289750, Registered Principal, Dunedin, Florida) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member as a financial and operations principal for 90 days. McClure is also required to requalify as a financial and operations principal prior to functioning in such capacity after the suspension. Without admitting or denying the allegations, McClure consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he conducted a securities business while failing to maintain the firm's minimum net capital and failing to maintain complete, current, and accurate books and records in that the firm's net capital computations were materially inaccurate. The findings also stated that McClure, acting on behalf of his member firm, filed FOCUS Reports Part IIA that materially overstated the firm's net capital and failed to file timely audited financial reports.

McClure's suspension began September 7, 2004, and will conclude December 5, 2004. (NASD Case #C07040051)

John W. McDonnell (CRD #4415674, Registered Representative, Wilmington, Delaware) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before McDonnell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McDonnell consented to the described sanctions and to the entry of findings that he engaged in an outside business activities for compensation without providing prompt written notice of the activity to his member firm.

McDonnell's suspension began August 23, 2004, and will conclude at the close of business November 22, 2004. (NASD Case #C9A040025)

Joshua Ryan Mickley (CRD #4653103, Registered Representative, New Philadelphia, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two

years. Without admitting or denying the allegations, Mickley consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Mickley's suspension began August 23, 2004, and will conclude at the close of business August 22, 2006. **(NASD Case #C8A040054)**

Eric Lee Miller (CRD #2200698, Registered Principal, Kings Park, New York) Submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in a principal capacity for 15 business days. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that while employed as Director of Compliance at a member firm, Miller failed to reasonably discharge his supervisory duties, in that, upon learning that an eavesdropping device had been installed in the firm office, failed to make an appropriate inquiry and/or direct that an inquiry be undertaken regarding this device.

Miller's suspension began September 7, 2004, and will conclude at the close of business September 27, 2004. **(NASD Case #CLI040021)**

Patricia Morency (CRD #4626110, Associated Person, Rosedale, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Morency reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morency consented to the described sanctions and to the entry of findings that she failed to disclose material facts on her Form U4.

Morency's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. **(NASD Case #CLI040020)**

Andre O'Neil Morgan (CRD #4000157, Registered Representative, Queens, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Morgan consented to the described sanction and to the entry of findings that he effected or caused to be effected the purchase of shares in the accounts of public customers without their knowledge, authorization, or consent. The findings also stated that Morgan falsified the personal information of a public customer on his new account application, including his date of birth, social security number, and residential address. NASD also found that Morgan failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #CLI040018)**

Patrick Roger Morrison (CRD #3159281, Registered Representative, Huntington Station, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Morrison falsified company records by submitting to his member firm a change of address form on behalf of a public customer without the customer's knowledge or consent. NASD also found that Morrison forged a public customer's signature on a change of address form, account agreement, option agreement, margin account agreement, and checks and submitted the forms to his member firm without the customer's knowledge, authorization, or consent. In addition, NASD found that Morrison converted customer funds totaling \$61,700 and exercised discretionary trading authority in a public customer's account without obtaining prior written authorization from the customer and without obtaining written acceptance of the discretionary trading account by his member firm. Furthermore, the findings stated that Morrison engaged in unauthorized transactions by employing deceptive means to defraud a public customer through the unauthorized transactions in her account. Moreover, the findings stated that Morrison failed to respond to NASD requests to provide information. **(NASD Case #CLI040002)**

William Taro Mukai (CRD #1760223, Registered Representative, Des Plaines, Illinois) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Mukai, no monetary sanction has been imposed. Without admitting or denying the allegations, Mukai consented to the described sanction and to the entry of findings that he executed excessive trading in the accounts of public customers without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customers based on their age, financial situations, and investment objectives. NASD also found that Mukai executed trades in the account of public customers and consistently designated them incorrectly as unsolicited. The findings also stated that Mukai exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. NASD found that Mukai prepared and delivered to the customers misleading communications, consisting of summaries of the trading in their accounts that contained exaggerated, unwarranted, and misleading statements by omitting losses and misrepresenting losses as gains. In addition, NASD determined that Mukai prepared and provided the misleading information to the customers without submitting them to the appropriate registered principal of his member firm for review and approval prior to their distribution.

Mukai's suspension began September 7, 2004, and will conclude at the close of business September 6, 2005. **(NASD Case #C8A030093)**

Raymond Louis Natili, III (CRD #2202614, Registered Representative, Greensboro, North Carolina) was fined \$23,243 and barred from association with any NASD member in any capacity. The fine must be paid before Natili reassociates with any NASD member. The sanction was based on findings that Natili failed to respond to NASD requests for information, and that he recommended purchase transactions to public customers that were unsuitable under the circumstances. (NASD Case #C07040025)

Andrew Alan Neff (CRD #2651241, Registered Representative, Stuart, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Neff failed to respond to NASD requests for information. NASD also found that Neff participated in private securities transactions without prior written notice to his member firm. NASD also found that Neff failed to respond to NASD requests for information. (NASD Case #C07040009)

James Christopher Pangione (CRD #2315739, Registered Representative, Carver, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pangione consented to the described sanction and to the entry of findings that he stated to NASD staff members that he would no longer respond to NASD requests for information. (NASD Case #C11040028)

Richard Timothy Pigg (CRD #2173165, Registered Representative, Springfield, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pigg converted his member firm's funds totaling \$52,226.20 to himself without the knowledge, authorization, or consent of the firm. The findings also stated that Pigg failed to respond to NASD requests for information. (NASD Case #C04040010)

David N. Pitts (CRD #3216375, Registered Representative, Cincinnati, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pitts made unauthorized withdrawals totaling \$219,162.12 from customers' accounts and used the improperly obtained funds for his own benefit. The findings also stated that Pitts failed to respond to NASD requests for information. (NASD Case #C8B040005)

Frank Porporino, Jr. (CRD #3185329, Registered Representative, Hawthorne, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$33,900, including disgorgement of \$23,900 in commissions, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Porporino consented to the described sanctions and to the entry of findings that he exercised control over a public

customer's account and effected excessive securities transactions in the account in a manner that was inconsistent with the customer's financial situation, investment objectives, and needs.

Porporino's suspension began September 15, 2004, and will conclude at the close of business December 14, 2004. (NASD Case #C9B040076)

William Scott Prendergast (CRD #2240522, Registered Principal, Leesburg, Virginia) submitted an Offer of Settlement in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 45 days, and required to complete an ethics course acceptable to NASD staff within 90 days of the acceptance of this offer. Without admitting or denying the allegations, Prendergast consented to the described sanctions and to the entry of findings that a U.S. District Court issued an order finding Prendergast in violation of a temporary restraining order filed against him by a member firm, and that he made certain materially false statements and representations to the Court. NASD also found that in reaching this ruling the Court drew "adverse inferences" based on Prendergast's assertion of his Fifth Amendment privilege to refuse to testify in the proceeding. The findings also stated that Prendergast failed to respond in a timely manner to NASD requests to testify.

Prendergast's suspension will begin September 20, 2004, and will conclude at the close of business November 3, 2004. (NASD Case #C07030038)

Alex Rabinovich (CRD #3100801, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rabinovich consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to provide testimony. (NASD Case #CLI040019)

Timothy Angelo Rassias (CRD #2106648, Registered Principal, Holden, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rassias consented to the described sanction and to the entry of findings that he stated to NASD staff members that he would no longer respond to NASD requests for information. (NASD Case #C11040027)

Andrew Vincent Reid (CRD #2407747, Registered Principal, New Orleans, Louisiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Reid received \$10,090.58 for investment and, without the customer's authorization, deposited the check into his personal bank account, thereby converting the funds. The findings also stated that Reid failed to respond to NASD requests for information. (NASD Case #C05040011)

Willeidean Robinson a/k/a Willeidean Moore (CRD #43906, Associated Person, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robinson consented to the described sanction and to the entry of findings that she improperly transferred \$30,000 from the account of a public customer to Robinson's husband's bank account without the customer's knowledge or consent. The findings also stated that Robinson failed to respond to NASD requests for information. **(NASD Case #C9B040068)**

Leonard Savitt (CRD #2495644, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Savitt consented to the described sanction and to the entry of findings that he made unauthorized mutual fund trades in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Savitt to exercise discretion in the accounts. The findings also stated that Savitt made mutual fund trades exercising discretion in the accounts of public customers in the absence of written authorization to exercise discretion in the accounts. **(NASD Case #C8A040064)**

Sydelle Emma Scardilli (CRD #4052341, Registered Representative, Brick, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Scardilli reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scardilli consented to the described sanctions and to the entry of findings that she willfully failed to disclose material information on her Form U4.

Scardilli's suspension began September 7, 2004, and will conclude March 6, 2005. **(NASD Case #C9A040033)**

Arthur Laurence Scheid (CRD #1405105, Registered Represented, Alto, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Scheid reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scheid consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Scheid's suspension began September 7, 2004, and will conclude March 6, 2005. **(NASD Case #C8A040071)**

Robert Scott Scheinman (CRD #2593087, Registered Representative, Hartsdale, New York) Submitted an Offer of Settlement in which he was fined \$5,000 and suspended from associating with any NASD member in any capacity for 30 business days. The fine must be paid before Scheinman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scheinman consented to the described sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer without obtaining prior written authorization from the customer and his member firm's acceptance of the account as discretionary.

Scheinman's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. **(NASD Case #C10040060)**

Charles Marc Shalmi (CRD #1293269, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Shalmi consented to the described sanctions and to the entry of findings that he solicited public customers to make transactions in OTC equity securities. NASD found that Shalmi improperly recorded those transactions as "unsolicited" on the order tickets, causing his firm's books and records to be inaccurate. NASD also found that Shalmi did not have the OTC equity securities transactions reviewed nor approved by the firm prior to the recommendations.

Shalmi's suspension began September 7, 2004, and will conclude at the close of business November 5, 2004. **(NASD Case #C11040030)**

Charles Albert Small (CRD #1265587, Registered Principal, Sacramento, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, including \$12,000 in disgorgement of commissions received, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Small reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Small consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation without providing prior written notification to and without obtaining prior written approval from his member firm.

Small's suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. **(NASD Case #C01040021)**

Steven Lee Smith (CRD #2224721, Registered Representative, Alpharetta, Georgia) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he failed to respond in a timely manner to NASD requests for information.

Smith's suspension began August 16, 2004, and concluded at the close of business September 3, 2004. (NASD Case #C07040041)

Thomas Socco (CRD #1712524, Registered Representative, Tinley Park, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Socco consented to the described sanction and to the entry of findings that he received checks from a public customer totaling \$580,350, made payable to a non-incorporated assumed name business owned and operated by Socco, to be invested in corporate bonds through Socco's member firm. Socco failed to follow the customer's instructions, in that he used the funds for some purpose other than the benefit of the customer and failed to return the funds to the customer. In addition, NASD found that Socco failed to respond to NASD requests for documents and information. (NASD Case #C8A040038)

Stephen Nicholas Thomas (CRD #3236045, Registered Representative, Queens, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Thomas improperly used customers' funds. (NASD Case #C10030082)

David Daniel Trowbridge (CRD #3165145, Registered Principal, Lake In the Hills, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Trowbridge consented to the described sanctions and to the entry of findings that he participated in activities outside the scope of his relationship with his member firm and failed to provide prompt written notice to his firm about these activities.

Trowbridge's suspension began August 16, 2004, and concluded at the close of business September 3, 2004. (NASD Case #C8A040061)

John Thomas Wagtowicz (CRD #4310867, Registered Representative, Freehold, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wagtowicz consented to the described sanction and to the entry of findings that he

affixed the purported signature of an applicant for an automobile insurance policy to a Requirement for Insurance Inspection/New Vehicle Document Submission form without the prior authorization, knowledge, or consent of the applicant and submitted the form to an insurance company as authentic. The findings also stated that Wagtowicz failed to respond to NASD requests for documents and information. (NASD Case #C9B040078)

Dale H. Yorgey (CRD #814563, Registered Representative, Allentown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Yorgey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Yorgey consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Yorgey's suspension began September 7, 2004, and will conclude March 6, 2005. (NASD Case #C9A040035)

Richard Dean Young (CRD #4282028, Registered Representative, Chandler, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Young reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Young consented to the described sanctions and to the entry of findings that while he was registered with a member firm, he received a request from a public customer for liquidation of \$5,000 from four separate mutual fund holdings, and that the customer requested that the \$20,000 in proceeds from the sale of these funds be invested in a short-term corporate bond fund. NASD found that Young did not execute these orders as instructed and, instead, to cover his failure he provided false account information to the customer.

Young's suspension began September 7, 2004, and will conclude at the close of business September 6, 2005. (NASD Case #C3A040035)

Demetrios Zouloufis (CRD #2805419, Registered Representative, Valley Stream, New York) was fined \$300 and suspended from association with any NASD member in any capacity for 30 business days. The sanction was based on findings that Zouloufis failed to obtain supervisory approval for the issuance of credits to an individual at his member firm with whom he was involved in a personal relationship. The findings also alleged that Zouloufis caused the firm to issue checks to the individual drawn against the individual's account. NASD also found that the credits were issued without the firm's knowledge,

authorization, or consent; that credits were not related to commission, adjustments, interest adjustments, or reversal of fees; and that Zouloufis did not have a legitimate business reason to issue any of the credits.

Zouloufis' suspension began August 2, 2004, and concluded at the close of business September 13, 2004. (NASD Case #CLI030011)

Individual Fined

Debora Holly Frank (CRD #1550224, Registered Representative, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was censured and fined \$10,000. Without admitting or denying the allegations, Frank consented to the described sanctions and to the entry of findings that she engaged in riskless principal proprietary trading of convertible bonds knowing that she was not qualified to do so. (NASD Case #CAF040057)

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the OHO and have been appealed to or called for review by the NAC as of August 6, 2004. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Donner Corporation International n/k/a National Capital Securities, Inc. (CRD #37702, Oklahoma City, Oklahoma), Jeffrey Lyle Baclet (CRD #2022409, Registered Principal, Santa Ana, California), Vincent Michael Uberti (CRD #2618595, Registered Principal, Santa Ana, California), and Paul Alan Runyon (CRD #3159920, Registered Principal, Lake Forest California). NASD expelled the firm from NASD membership and barred Baclet from association with any NASD member in any capacity. NASD fined Uberti \$40,000, suspended him from association with any NASD member in any capacity for 30 months, and ordered him to requalify as a general securities representative and a general securities principal. NASD fined Runyon \$20,000, suspended him from association with any NASD member in any capacity for six months, and ordered him to requalify as a general securities representative and a general securities principal. The fines are due and payable when and if Uberti or Runyon seek to return to the securities industry.

The sanctions are based on findings that the firm, Baclet, and Uberti issued research reports that failed to disclose material information about the subject companies and contained misleading, exaggerated, and false statements in violation of SEC and NASD rules. NASD found that in the firm's research reports,

the firm, Baclet, and Uberti omitted the existence of and underlying basis for independent auditors' "going concern" opinions; included fraudulently exaggerated, misleading, and false statements; and failed to disclose that the firm had received compensation for the preparation and dissemination of the research reports. In addition, NASD found that the firm and Baclet failed to have the research reports approved and signed by a principal of the firm even though Baclet was a principal and was designated as the person in charge of advertising. Moreover, NASD found that the firm and Baclet failed to establish and maintain adequate written supervisory procedures pertaining to the preparation and dissemination of the firm's research reports. Furthermore, NASD found that Uberti and Runyon fraudulently failed to disclose material negative financial information and included exaggerated and misleading information in their research reports.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF020048)

Justin F. Ficken (CRD #4059611, Registered Representative, Boston, Massachusetts) was barred from association with any NASD member in any capacity. The sanction was based on findings that Ficken failed to respond to NASD requests to answer questions and to appear for on-the-record testimony.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C11040006)

Todd Grafenauer (CRD #4408817, Registered Representative, Mukwonago, Wisconsin) was barred from associating with any NASD member in any capacity. The sanction was based upon findings that Grafenauer forged and falsified documents required by his member firm to recruit and utilize college interns.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C8A030068)

Scott Wiard (CRD #1509365, Registered Principal, Ypsilanti, Michigan) and James Reisinger (CRD #1275258, Registered Principal, Dexter, Michigan) were barred from association with any NASD member in any capacity. The sanctions were based on findings that Wiard and Reisinger engaged in unsuitable transactions in the accounts of public customers and used discretionary authority to pursue a high-risk investment strategy that was not authorized by these customers. NASD also found that Wiard exercised discretion in the accounts of public customers even though the terms of his MC-400 approval prohibited him from maintaining discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C8A030078)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Vincent James Cappetta (CRD #2471511, Registered Principal, North Babylon, New York) was named as a respondent in an NASD complaint alleging that he recommended and induced public customers to purchase bonds in that he directly or indirectly, by the use of means or instrumentalities of interstate commerce, omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. The complaint further alleges that Cappetta lacked reasonable grounds to believe that the recommendation of the purchase bonds on margin was suitable for the customers, in light of the financial situation, investment objectives, and needs of the customers. In addition, the complaint alleges that Cappetta executed transactions, or caused transactions to be executed in customer accounts, without reasonable grounds for believing that the level of activity represented by such transactions was suitable based on each customer's respective financial situation, investment objectives, and needs. Furthermore, the complaint alleges that Cappetta exercised discretionary trading authority in a public customer's account without obtaining the customer's prior written authorization and his member firm's prior written acceptance of the account as discretionary. (NASD Case #C10040085)

Carmen Rosario Caro (CRD #1949991, Registered Representative, San Juan, Puerto Rico) was named as a respondent in an NASD complaint alleging that she recommended public customers to sign, in blank, a Partial Withdrawal form relating to their variable annuity in order to take advantage of investment opportunities. The complaint alleges that sometime after signing the Partial Withdrawal form and a cover letter as recommended by Caro, \$25,000 was withdrawn from the customers' variable annuity and a check was issued and mailed to a third party. The complaint further alleges that the customers did not authorize the withdrawal of the specific amount of \$25,000 from their variable annuity, did not know of the third party, and did not authorize the funds to be mailed to a third party. In addition, the complaint alleges that

Caro failed to respond to NASD requests for information and documentation. (NASD Case #C07040066)

Charles Phillip Clark, III (CRD #2379623, Registered Representative, St. Louis, Missouri) was named as a respondent in an NASD complaint alleging that he deposited 16 checks totaling \$44,425.24 received from a public customer into his personal bank account and used these funds for his personal use and benefit without the customer's knowledge, consent, or authorization. The complaint further alleges that Clark failed to respond to NASD requests for information. (NASD Case #C04040034)

Andrew Paul Gonchar (CRD #1659516, Registered Representative, Staten Island, New York) and Polyvios Tony Polyviou (CRD #1659532, Registered Representatives, Upper Saddle River, New Jersey) were named as respondents in an NASD complaint alleging that they interpositioned a hedge fund in transactions with public customers causing the customers to unknowingly pay more than they should have for bond purchases, and that they either knew, should have known, or were reckless in not knowing, that their interpositioning scheme would result in increased costs and excessive prices being charged to the customers. The complaint also alleges that Gonchar and Polyviou failed to disclose to public customers that the hedge fund was interpositioned in each trade, causing the customers to pay higher prices. In addition, the complaint alleges that Gonchar and Polyviou charged public customers unfair, excessive, and fraudulent markups for convertible bond transactions, and failed to disclose the excessive and fraudulent markups to the customers. Moreover, the complaint alleges that Gonchar and Polyviou failed to disclose to public customers, and the customers did not know, that under the circumstances, the markups and markdowns in transactions were unfair, excessive, and fraudulent. (NASD Case #CAF040058)

Lori A. Huck (CRD #4190301, Associated Person, Greenfield, Wisconsin) was named as a respondent in an NASD complaint alleging that, without the knowledge or consent of her member firm's public finance department, she converted approximately \$59,079.69 from the finance department by endorsing checks made payable to her member firm, depositing the checks into her personal securities and bank accounts, and using the proceeds from the checks for her own benefit or for the benefit of someone other than her member firm's public finance department. The complaint also alleges that Huck converted approximately \$1,400 from the securities account of a public customer by endorsing a check payable to her member firm, depositing the check into her personal securities account, and using the proceeds for her own benefit or for the benefit of someone other than the public customer. In addition, the complaint alleges that Huck received \$10,000 from a public customer to be deposited into the customer's account and failed to follow the customer's instructions, in that she deposited the funds into her personal securities account and used the funds for

some purpose other than the benefit of the customer; the deposit was reversed and credited to the customer's securities account two days later. Furthermore, the complaint alleges that Huck failed to respond to NASD requests for documents and information. (NASD Case #C8A040069)

Todd William Kmiec (CRD #1726325, Registered Supervisor, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the recommendation and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. The complaint alleges that Kmiec failed to respond to NASD requests for information. (NASD Case #C8A040056)

Marcus Kalman Nagel (CRD #2170816, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he misused a public customer's funds totaling approximately \$307,139.67 by depositing checks received from the customer into his personal savings account and placed only \$13,600 in the customer's brokerage account at his member firm. The complaint also alleges that Nagel failed to respond to NASD requests for information. (NASD Case #C10040082)

Jericho Guazon Nicolas (CRD #2030192, Registered Representative, San Francisco, California), Angel Cruz (CRD #1988787, Registered Representative, San Francisco, California), and Anthony Joseph Martinez (CRD #1568443, Registered Representative, Lake Grove, New York) were named as respondents in an NASD complaint alleging that they generated intra-day profits of more than \$694,000 in their member firm's proprietary accounts by trading ahead of a firm customer without disclosing that the firm was realizing such a profit on the customer's transactions in addition to agreed upon commissions, mark-ups, and mark-downs. The complaint alleges that Nicolas, Cruz, and Martinez, after receiving an order from the customer or learning of his intention to place an order, used the information thereby obtained to take a position in a firm proprietary account in the security the customer wished to buy or sell. The complaint further alleges that, if the position increased in value in the course of the day, the respondents executed the customer's order as a principal transaction at the later price; otherwise, the respondents executed the order at the earlier price as a riskless principal transaction. In addition, the complaint alleges that in carrying out the scheme the respondents caused, or caused their firm to create, false records and customer confirmations and failed properly to report transactions. (NASD Case #CAF040052)

Raul Peralta (CRD #4547226, Associated Person, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer as an endorsement on a \$2,667.47 check made payable to the customer without the customer's authorization, knowledge, or consent, and misused the customer's funds by cashing the check without the customer's authorization, knowledge, or consent. The complaint also alleges that Peralta failed to respond to NASD requests for information. (NASD Case #C8A040062)

Donald Lee Roseen (CRD #3184246, Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he affixed the signatures of public customers on "Switch Letters" and submitted them to his member firm in connection with mutual fund transactions and without the knowledge and consent of one of the individuals. The complaint also alleges that, although his member firm's policies and procedures manual prohibited representatives of the firm from signing a document on behalf of a client, Roseen failed to inform anyone at his member firm that he had signed the customers' names on the documents. (NASD Case #C8A040068)

LH Ross & Company, Inc. (CRD #37920, Boca Raton, Florida), Franklyn Ross Michelin (CRD #2459180, Registered Principal, Boca Raton, Florida), Kelly P. Paterno (CRD 2355542, Associated Person, Deerfield Beach, Florida), and Robert John Vitale (CRD #2695384, Registered Representation, Parkland, Florida) were named as respondents in an NASD complaint alleging that the firm, acting through Michelin, Paterno, and Vitale engaged in fraudulent and deceptive devices and contrivances involving trading in stocks through the use of instrumentalities of interstate commerce, or of the mails, or of a facility of any national securities exchange. The complaint alleges that the firm, acting through Michelin, Paterno, and Vital failed to act with reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to act diligently to ensure that the prices paid by the customers were as favorable as possible under the then prevailing market conditions. In addition, the complaint alleges that Paterno has never been registered with NASD in any capacity, but he functioned as an equity trader for the firm, entering and reporting trades on behalf of the firm, determining when and how to execute trades, directing trades to market makers or the firm's clearing firm, and conducting proprietary trades for the firm. The complaint also alleges that the firm, acting through Michelin, allowed Paterno to function as a registered person without the benefit of registration. The complaint further alleges that the firm, acting through Paterno, failed to make and preserve order tickets for the transactions as required by Rules 17a-3 and 17a-4, and that the firm, acting through Michelin, failed to follow the firm's supervisory procedures. (NASD Case #C05040054)

Firm Suspended for Failure to Supply Financial Information

The following firm was suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

American International Securities, Inc.
New York, New York
(July 16, 2004)

Suspension Lifted

NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

Harvest Capital Investments LLC
Vienna, Virginia
(August 3, 2004)

Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the bar became effective is listed after the entry.)

Andre, Antoine
Dania, Florida
(July 21, 2004)

Barber, Christopher Layne
Wake Forest, North Carolina
(July 19, 2004)

Tanwir, Khurram
New York, New York
(August 9, 2004)

Individuals Suspended Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210.

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Antonucci, Dominic
Rochester, New York
(August 9, 2004)

Diehl, Ronald E.
Germantown, Tennessee
(June 19, 2004)

Multhaup, Karen
Auburn Hills, Michigan
(July 21, 2004)

Paulino, Jose M.
Union City, New Jersey
(August 9, 2004)

Penzini, Pedro
Key Biscayne, Florida
(August 9, 2004)

Reifer, Joshua
Brooklyn, New York
(July 6, 2004)

Tijanich, Brett E.
Avon, Ohio
(August 9, 2004)

Wiggins, Norbert L.
Arlington Heights, Illinois
(July 1, 2004)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

Martellaro, Carl Dominic
Chico, California
(May 10, 2004)

Richardson, Wayne
Northport, New York
(July 26, 2004)
Richardson has appealed this decision to the SEC.
(NASD Case # ARB040010)

Smith, Jason Daniel
Boston, Massachusetts
(July 10, 2004)

NASD Granted First Temporary Cease-and-Desist Order to Stop Ongoing Fraud by Brokerage LH Ross

Firm Charged with Illegally Raising Millions through Fraudulent Self-Offerings

Finding that L.H. Ross and Company, Inc.'s "misconduct poses an extreme threat to the investing public," an NASD Hearing Panel for the first time has granted a petition for a temporary cease-and-desist order (TCDO) to immediately stop ongoing fraud by a brokerage firm while an NASD disciplinary proceeding is underway.

Under the terms of the TCDO, the Boca Raton, FL-based firm was ordered to cease raising funds for itself through two unregistered private placements as well as through the sale of promissory notes. The firm was also ordered to stop opening new branch offices and to stop paying bonuses or other compensation to brokers or branch managers as an incentive for joining the firm. And the firm was ordered to collect \$2 million from a parent company within one month and deposit the funds in escrow. The panel ordered this and other relief to "benefit customers by protecting them from exposure to additional serious violations and further dissipation or conversion of assets."

Late last month, NASD's Department of Enforcement filed for a TCDO against LH Ross, seeking an immediate halt to ongoing fraudulent and illegal sales activities relating to unregistered private placement self-offerings that to date have raised more than \$10 million for the firm (see www.nasdr.com/news/pr2004/release_04_050.html). This is the first time NASD has used its temporary cease-and-desist authority, which was approved by the SEC and went into effect in June 2003.

"LH Ross is engaging in an ongoing campaign of deceit designed to lure unsuspecting and unqualified customers into making highly risky private investments based on misleading and incomplete information," said NASD Vice Chairman Mary L. Schapiro. "Using its temporary cease-and-desist remedy, NASD acted promptly to force LH Ross to stop its ongoing fraudulent conduct and to stop victimizing investors."

In its decision and order, the Hearing Panel found that LH Ross's brokers made oral misrepresentations to investors, many of whom were elderly. The panel found that the brokers "stood to benefit from their material misrepresentations and omissions and high-pressure sales tactics [and] intended to deceive, manipulate or defraud investors..." Among the misrepresentations: that investors could "double, triple or quadruple their money" once the firm went public soon, when in fact the firm had not taken substantial steps to have its stock publicly traded. There was no reasonable basis for their prediction that the stock's price would rise given the firm's financial problems and regulatory issues. In

addition, brokers told customers that their investment would pay dividends that exceed current interest rates, when the firm had not paid dividends since 2001 and suffered continuous net operating losses.

The panel also noted that it was "greatly disturbed" by the financial relationship between the firm and its holding company, both of which were controlled by the same person. The panel found that as the LH Ross raised funds from investors it transferred those funds from the firm, "whose books and records are subject to inspection by the NASD and other regulators," to the holding company "that is beyond scrutiny."

The panel found that LH Ross' conduct violates federal securities laws and NASD rules, and that allowing that violative conduct to continue would likely result in significant harm to investors before disciplinary proceedings against LH Ross are completed. The TCDO will remain in effect until the underlying disciplinary action against the firm for this misconduct has been resolved. NASD may seek to suspend or expel a firm for violating a TCDO.

LH Ross is the subject of four other actions pending before NASD disciplinary panels: CAF030055, filed October 10, 2003, alleging a scheme to illegally manipulate the market in Trident Systems International stock; CAF040042, filed May 26, 2004, alleging that LH Ross and its president, Franklyn Michelin, failed to timely pay an arbitration award; C07040054, filed July 7, 2004, alleging that LH Ross and Michelin participated in a fraudulent scheme to profit at the expense of its customers through unauthorized trades; and C07040074, filed August 26, 2004, alleging that LH Ross and Michelin failed to respond to NASD requests for information.

Under NASD rules, the individuals and firms named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, an order to pay restitution, censure, suspension, or bar from the securities industry.

NASD Orders First-Ever Suspension of Mutual Fund Business and \$600,000 in Sanctions against National Securities Corp. for Deceptive Market Timing Practices

For the first time, NASD has prohibited a regulated firm from opening mutual fund accounts for new clients for 30 days—for facilitating deceptive market timing practices and for failing to have an adequate supervisory system to prevent deceptive market timing and late trading.

National Securities Corp., based in Seattle, WA, was also fined \$300,000 and ordered to pay almost \$300,000 in restitution to the funds that were affected by the deceptive market timing. In addition, National was ordered to revise its supervisory systems to correct supervisory and e-mail retention deficiencies.

National's president, Michael A. Bresner, was fined \$25,000 and received a one-month supervisory suspension for the firm's supervisory failures. David M. Williams, the firm's former chief operating officer, also was fined \$25,000 and received a four-month supervisory suspension.

"This is an example of a firm whose management totally ignored repeated red flags that its brokers were facilitating deceptive and improper market timing in mutual funds by hedge fund clients," said NASD Vice Chairman Mary L. Schapiro. "This failure, and the harm it caused to long-term investors, combined with the failures of supervision warrant the extraordinary remedy of temporarily prohibiting the firm from opening new mutual fund accounts."

NASD found that from January 2001 through August 2002, National helped four hedge fund clients engage in deceptive market timing practices aimed at 13 mutual funds that had restrictions and prohibitions against these practices. The hedge fund clients transacted at least 1,000 mutual fund trades, totaling nearly \$400 million, after National had received notices that the fund companies considered the timing strategy of the clients to be disruptive and contrary to the interests of long-term investors. These notices were ignored as the hedge fund clients reaped profits of approximately \$300,000 at the expense of long-term investors. This conduct was contrary to the high ethical standards required by NASD rules.

Despite the issuance of multiple notices by the mutual funds demanding that the hedge fund clients stop market-timing their funds, National failed to prevent them from continuing to trade the funds through deceptive means. For example, after an account was restricted by a fund for market timing, the hedge fund client would evade subsequent detection by shifting the prohibited activity to another brokerage account that it controlled. In a few instances, the hedge fund client continued to time the fund through the very same account that had been restricted by the fund company. This resulted in the issuance of additional notices or warnings until the account finally complied with the market timing restriction.

At least two of National's senior officers, Bresner and Williams, failed to ensure that the firm had an adequate supervisory system designed to prevent and detect deceptive market timing practices. They also failed to respond to red flags that pointed to the deceptive practices. Bresner, Williams, and other supervisors received multiple notices from the affected funds directing that the hedge fund clients stop the market timing activity. Additionally, prospectuses and selling agreements for the mutual funds contained explicit restrictions or limitations on market timing. Instead of placing limitations on the evasive activities of the hedge fund clients, however, National assumed a hands-off approach with respect to their deceptive practices.

"Market timing" refers to the practice of the rapid trading of mutual fund shares in order to exploit inefficiencies in the pricing of mutual funds. While not illegal per se, market timing raises transaction costs for fund companies, which diminishes investor returns. Rapid and repeated redemptions also can force fund managers to sell winning investments, and/or cause managers, anticipating frequent redemptions, to hold a larger cash reserve than necessary and desirable. Consequently, mutual funds often maintain policies and procedures to detect and prevent market timing.

Inadequate Supervisory System for Detecting Late Trading

"Late trading" refers to the practice of placing mutual fund orders after the fund has calculated its daily net asset value (NAV)—typically when markets close at 4 p.m. Eastern Time—but receiving the price based upon that earlier, 4 p.m. calculation. Firms that permit late trades for select customers provide them with an information advantage—by allowing them to trade based on news that breaks after the market close that could affect the value of the mutual fund's holdings, but which is not reflected in the NAV for that day. SEC and NASD rules prohibit late trading to ensure that all purchasers of mutual fund shares are on equal footing as to price and information on any given day.

National, acting through Bresner, Williams, and the firm's compliance officer, failed to develop or implement a supervisory system that was reasonably designed to prevent or detect late trading, despite the fact that selling agreements National had with various mutual funds required the firm to monitor such activities to ensure fair pricing. Moreover, the volume of market timing business in question created significant risk of late trading, and mutual fund orders underlying the market timing in question were repeatedly transmitted to National's trading desk in Seattle after 4:00 p.m. Eastern Time, raising red flags of improper late trading.

During its investigation, NASD also found that National failed to preserve and maintain internal e-mail communications relating to the firm's business, as required by the federal securities laws and NASD rules.

In settling these matters, National, Bresner, and Williams neither admitted nor denied the allegations or findings. The investigation of individual brokers and others involved in the misconduct is continuing.